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The International Status
And Government of
The Panama Canal Zone

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THE INTERNATIONAL STATUS AND GOVERNMENT
OF THE PANAMA CANAL ZONE

BY

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THESIS

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I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

Andrew Franklin Hunsaker

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"THE INTERNATIONAL STATUS OF THE PANAMA CANAL ZONE"

In this study it will be our purpose to make a review of the several treaties entered into between the United States and other governments, looking toward the construction of an Isthmian Canal, and to determine the international status of the proposed canal as expressed in these conventions.

The present international status of the Panama Canal is the direct result of a treaty entered into by the United States and the Republic of Panama, but, in general, we may say that the present status of the canal is the outcome of a number of treaties and agreements entered into by the several nations that were interested in having a ship canal built across Central America. The treaties of primary importance were: The Clayton-Bulwer treaty of April 19, 1850, entered into between the United States and Great Britain, for the purpose of setting forth their views and intentions with reference to providing a means of communication by ship canal between the Atlantic and Pacific Oceans; The Hay-Pauncefote convention of February 3, 1900, which, although it was not ratified, was of considerable importance in Isthmian Canal affairs, because it opened the way and served as a basis for another treaty later, which is known as the Hay-Pauncefote convention of November 18, 1901. In the convention of 1901, the treaty made with England in 1850, was superseded and it was made possible for the United States to build the proposed canal.

The remaining treaties were made with Central American Republics. These were: The Hay-Herzan treaty of 1903, with Colombia,



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which granted a canal concession to the United States, and gave other concessions which would have made the construction of the canal possible had the treaty not been rejected by the Colombian Congress. The Hay-Varilla treaty of November 18, 1903, between the newly formed Republic of Panama and the United States, which gave the United States a canal concession and power to construct, maintain, operate and protect an interoceanic canal across the Isthmus of Panama.

The history of canal schemes, proposed and entered into by the various nations interested, is a long and complicated one, and we need only refer briefly to some of the more important transactions in which our country has been a party. During the past century the need of a ship-canal across the Central American Isthmus has been felt very keenly by the larger commercial powers; and many attempts have been made toward the construction of such a canal. The nations most interested were England, France and the United States. These interests were manifested very early and grew more intense till November 18, 1903, when it was definitely settled that the United States government should build the proposed canal.¹

Throughout the period of canal projects, in which the United States took a leading part, it was confronted with the added question of protection which had been assumed over the Latin-American Republics. A series of difficulties had arisen with Great Britain over their rights in Central America. And, owing to the efforts which were made by rival American and English commercial companies, a jealous feeling existed on the part of "the great

1. Hay-Varilla treaty. S. Doc. No. 204. 57th Cong., 2d Session.

maritime power; each was desirous of obtaining some exclusive advantage to itself in reference to the operating of a canal route, but peaceful relations were maintained, however, and the status of the proposed Isthmian Canal was fixed by a treaty signed April 19, 1850, known as the Clayton-Bulwer treaty.¹

In this compact the United States made concessions that weighed heavily upon it and the Latin American Republics for almost a half century, during this time our government was bound by treaty stipulations "never to secure sole control of any Isthmian Canal; an agreement which acted as a check to any step that the government might wish to take toward constructing a canal.

The purpose of this convention was stated to be "for facilitating and protecting the construction of a ship canal between the Atlantic and Pacific Oceans." Both governments pledged themselves never to obtain exclusive control over the said canal; agreeing never to erect or maintain any fortifications commanding the same; and not to colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America. They further agreed that vessels of the contracting parties traversing the canal in time of war should be exempt from blockade, detention, or capture by either of the belligerents. They agreed to protect the government or company that should undertake the work, and to exert the influence which they possessed with the Central American governments to facilitate its construction.

The neutrality of the canal, at its completion, was guaranteed, so long as no unfair discriminations were made in exacting tolls; they invited all friendly States to enter into similar stipulations

1. S. Executive Doc. 1.54 Cong. 1 sess.

with them as the design of the convention was the construction and maintenance of a ship communication between the two oceans, for the benefit of mankind, and on equal terms to all.

Thus the status of the proposed canal was fixed as far as its ownership and control were concerned, neither the United States nor Great Britain could own or control an Isthmian Canal. To any company building the canal, however, the support and encouragement of both governments was promised, but two freights were demanded from such company. The status was further modified by the eighth article of the treaty, in which the governments of England and the United States expressed the desire not only to "accomplish a particular purpose, but to establish a general principle, and they agreed to extend their protection by treaty stipulation", to any canal or railway that may be constructed by the way of Tehuantepec or Panama. No charges or conditions of traffic could be imposed by the parties constructing or owning the canal, other than those approved as just and equitable by the American and English governments.

The "general principle" which was desirous of being established, was the permanent joint neutralization of the canal that was to be built. Throughout the history of canal schemes all nations interested have insisted upon a strict neutralization of any proposed Central American canal. The United States in its diplomatic relations with other powers always expressed this view. As early as 1826, it is referred to by Henry Clay, Secretary of State, in one of his diplomatic instructions. Should such a canal be built, "the benefits of it", he wrote, "ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe."¹

1. Cong. Globe, Vol. 27, p. 265.

President Polk carried the idea into execution in the treaty with New Granada 1845, by which the United States agreed to guarantee the neutrality of the Isthmus of Panama, so that the canal or railroad might be constructed between the two seas, and the Panama route be "open to all nations on the same terms".¹

Although the treaty was in line with our traditional policy, it gave rise to many disputed questions, for the United States and England drew different bearings from several of the articles. After the first few years, the question slept for a long time and it was revived by the discussion which grew out of the undertaking of the French Company to construct a canal across the Isthmus of Panama, and the policy of the government in making such a treaty was then much questioned.²

During the period from 1830 to 1880, the only great concern the United States had in Isthmian matters, was, lest England should violate her treaty rights and get possession of more territory in Central America. Not until 1880, was the idea of exclusive control on the Isthmus advanced. President Hayes in his annual message declared America's policy to be "an American Canal under American control".³ The same policy was upheld and advanced by both secretaries Blaine and Frelinghuysen.⁴ This view, however, did not entirely reverse the traditional policy, but merely imposed a guarantee upon the United States.

Only since 1880, has an exclusively American canal been advanced. In March 1880, Representative Reynolds, of Iowa, proposed

1.Cong. Globe, Vol.XVII,p.233.

2.Wharton's International Law Digest. Vol.2. p.101.

3.S.Pol. 242. 41 Congress, 2 sess.

4.For. Rel. 1882. p.p. 302-303.

a measure in Congress which favored a canal controlled exclusively by the United States.¹ From 1896 to 1900, the idea set forth in President Hayes' message was not renewed except that the members of Congress were impatient and the people in general were denouncing foreign influence in the Isthmus, so public opinion grew till 1900, when President McKinley expressed himself as favoring "an American Canal", which view was heartily approved by the people.²

As long as the treaty of 1850 remained in force the status of any Isthmian Canal was fixed, and the new policy of American control advanced, could not be put into effect. Under these conditions the administration redoubled its efforts to free the government of the mistake made in this convention. In January 1900, it became known that negotiations were in progress to conclude a treaty with Great Britain relating to a ship canal.

On February 8, 1900, Mr. Hay, Secretary of State, and Lord Dunsfote, British Ambassador, signed a convention at Washington.³ The purpose of which was stated to be "to facilitate the construction of an Isthmian Canal," and to that end remove any objection which may arise out of the Clayton-Bulwer treaty to the construction of such a canal under the auspices of the United States. The general principle established in article eight of the convention of 1850, was not to be impaired.

The treaty concludes, first, that the canal may be constructed under the auspices of the United States Government, and, secondly, that the latter shall enjoy "all the rights incident to such construction, as well as the exclusive right of providing for the

1. S. Doc. 711. 33d Cong. 2 sess.

2. For. Pol. 1899. p. 71.

3. S. C. Doc. 65. 57 Cong. 1 sess.

regulation and management of the canal! Under condition, however, that it shall be free and open in time of war as in time of peace, to all nations on terms of equality, and no discrimination shall be shown as to traffic or otherwise.

In order to preserve unimpaired the "general principle" of the neutralization established in article eight of the Clayton-Bulwer treaty, the parties to the Convention adopted certain rules, substantially identical with those accepted in 1858, at Constantinople, by all the Great Powers, to assure the free navigation of the Suez Canal. The first of these was quoted above; Nos. 2 to 6 provide against a blockade of the canal and the committal of hostile acts within the waters adjacent to either end, and for the immunity from attack or injury by belligerents, in time of war, of any part of the canal or any accessories thereto. The seventh Article reads thus: "No fortifications shall be erected commanding the canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder".

In this treaty as well as that of 1858, both contracting parties recognize the necessity of securing the adherence of other nations to what is described as the construction and maintenance of the canal "for the benefit of mankind, on equal terms to all".

The status of the treaty to be constructed under the treaty of 1900 was as follows: Great Britain surrendered the right of joint control, as provided for in the treaty of 1858, and gave to the United States the authority of police and sanitary regulation, and asked in return that the canal when completed should be an open water highway for the commerce of the world, to insure this, certain

regulations, those adopted for the regulation of the Suez Canal, were suggested and agreed upon. The Convention was communicated to the Senate, which gave its consent to the exchange of ratifications, after having inserted several amendments. The British government, however, refused to accept the instrument as amended, and the Clayton-Bulwer treaty remained in force.¹

In the meantime the same Plenipotentiaries who had negotiated the treaty of February 5, had been actively engaged in negotiating another treaty; and on November 18, 1901, an agreement was reached, to which both governments gave their approval.²

The final agreement follows in main the form of the treaty of 1900, with some omissions and additions. The purpose of entering into this agreement was the same as that of 1900, "to facilitate the construction of an Isthmian Canal". The first article states that the Clayton-Bulwer treaty of 1850, is superseded. This was inserted in the new draft as a compromise. The Senate, when it amended the former treaty, had demanded that a separate article be inserted stating that the Clayton-Bulwer treaty was superseded. Article two reads verbatim as article one of the convention of 1900, in which the United States government is granted the privilege of constructing a canal across the Central American Isthmus.

Article three states the rule of neutralization of the canal, as embodied in article two of the original draft. The expression, which convention is hereby superseded, in the opening clause, is omitted having been formal into article one of the present treaty. Rule seven, quoted above, which provides that no fortifications

1. S. Rec. 25. 37 Cong. 1st sess.

2. S. Rec. 26. 57th Cong. 1st Session.

shall be directed commanding the canal or waters adjacent, is omitted. The latter portion of the rule is incorporated in rule two of the new draft and provides for the protection of the canal against lawlessness and disorder. Article three of the original draft, inviting the adherence of the powers, is omitted. The last point of dispute, the territorial sovereignty of the country traversed by the canal, was agreed upon and formed into article four, which states that: No change of international relations of the country traversed by the proposed canal shall affect the "general principle" of neutralization agreed upon.

Upon the ratification of the treaty by both contracting parties, the Clayton-Bulwer treaty of 1850 was abrogated, and the United States was left free to act on its own initiative and follow out an American policy regarding the proposed Isthmian Canal; and has notified the world that it would not accept the control or influence of any other government in Central American Canal affairs. Congress and the Executive have been clear in their declarations on this subject. "The Political and National control of a Ship Canal through the Isthmus must be American".¹

The international status of the canal that may be built under the terms of the Hay-Pauncefote convention differs in some respects from that of the Suez canal. The Suez Canal may not be fortified at its entrances or along its course. The Hay-Pauncefote treaty is silent on this point, from which we may infer that the United States is left free to act on its best judgment in the matter. Also the Suez Canal is regulated and managed in accordance with the stipulations of the treaty of Constantinople 1888, while the United States

1. President's Message, H. Doc. 112. 46 Cong. 2d sess.

is left free, in the Hay-Pauncefote treaty "to enjoy all rights in-
 silent to the construction, as well as the exclusive right of pro-
 viding for the regulation and management of the canal".

Shortly after the Government entered into the above agree-
 ment, in which the treaty of 1850 was abrogated, Congress passed
 the Spooner act June 28, 1902.¹ This measure, entitled "An act to
 provide for the construction of a canal connecting the waters of
 the Atlantic and Pacific Oceans", authorized the President to buy
 the assets of the French Panama Canal Company for a sum not great-
 er than \$20,000,000, and to secure perpetual control and jurisdic-
 tion over a strip of territory not less than six miles wide, by ne-
 gotiating with the Republic of Colombia, such a strip to comprise
 territory on both sides of the canal route as well as the Panama
 Railroad, and the ports of Colon on the Caribbean Sea and Panama
 on the Pacific Ocean.

The President was authorized to pay whatever sum might be
 needed to Colombia for territorial concessions. It was further pro-
 vided that if the President should not be able to secure a satisfac-
 tory title to the property of the French Company, or should not be
 able to make acquisition of territory from Colombia, "within a reason-
 able time and upon reasonable terms", then the President, having ob-
 tained territorial concessions from Nicaragua and Costa Rica upon
 reasonable terms, might proceed without further authority from
 Congress to build the Nicaragua Canal. The remainder of the act
 made provision for the creation of an Isthmian Canal Commission
 to have charge of construction, and contained all the provisions
 necessary to enable the President, without further legislation, to

acquire a route and to proceed to dig a canal deep enough for the largest ships afloat.

Through the efforts of the Canal Commission, provided for in the above act, terms were made with the French Panama Canal Company for the purchase of its holdings and improvements. A treaty was also negotiated with Colombia January 22, 1903, known as the Hay-Gerran convention, which granted the United States a canal concession.

By this treaty the status of the canal would have been changed materially, but the Colombian Congress refused to ratify it, whereupon the status remained the same as expressed in the Hay-Pauncefote convention of 1901. In the proposed treaty the Republic of Colombia did not renounce her sovereignty over any part of the Isthmus, but simply granted to the United States the use and control of a zone of territory six miles wide extending from the Pacific Ocean to the Caribbean Sea, for a period of one hundred years and renewable at the option of the United States, or a lease in perpetuity. The United States was to establish ports at the terminals of the canal and they were to be free. Colombia retained jurisdiction over all persons in the zone except American citizens.

A revolution was in progress in Panama during the years 1901-03, and to fulfill the stipulations of the treaty of 1903 with Colombia, namely, to keep interoceanic traffic free and undisturbed, the United States found it necessary to send war vessels and troops near the scene of action. On November 2, 1903, two days after the rejection of the Hay-Gerran treaty by the Colombian Congress, the President, through the Secretary of War, ordered the Commander of the war ships in the Colombian waters: To maintain free and uninterrupted transit across the Isthmus and prevent the landing or approach

of any force on Colombian ships within fifty miles of the ports of Panama, and in the interests of peace to make every effort to prevent government troops from proceeding from Colon to Panama.¹ Under these conditions, and already desirous of their freedom from Colombia, the people of Panama unanimously declared their independence on November 3, 1903, and ten days later the United States recognized the Republic of Panama as an independent nation.²

The conduct of the United States government, in recognizing the independence of the Republic of Panama, was defended on the ground of the treaty of 1846 with New Granada, described by Secretary Hay as "a covenant which runs with the land", and of, "the interests of collective Civilization". It was held that we had guaranteed the sovereignty of Colombia against a foreign power, but not against her own Citizens. The recognition of the independence of Panama by the United States was soon followed by similar action on the part of the European nations and some of the Latin American Republics.³

Recent developments have sanctioned the prompt recognition of the independence of Panama. Speaking on this subject Hall an authority on international law says, "For though no state has the right to withhold recognition when it has been earned states must be allowed to judge for themselves when a community claiming to be recognized does really possess all the necessary marks, especially whether it is likely to live." It was upon this principle that the United States acted when it entered into diplomatic relations with

1. President's Special Message, Nov. 30, 1903, 240-277.

2. President's Special Message, Nov. 30, 1903, 304.

3. Columbia University Studies, Vol. 20, p. 313.

4. Hall, Treatise on International Law, 1, 277.

the newly formed Republic, guaranteeing its independence.

The United States government immediately entered into negotiations with the newly established Republic, ostensibly in pursuance of the provisions of the Spooner Act, which President McKinley construed to authorize him to treat with the power in control of the Isthmus, in order to acquire a canal concession. These negotiations culminated in the Hay-Varilla treaty of November 18, 1903. The text of this treaty reveals many points of improvement over the Hay-Herran treaty with Colombia: In the first place, the Canal Zone ceded to the United States is ten miles wide, instead of six miles wide, but the cities of Colon and Panama, and their adjacent harbors, are not included within the grant.

In addition to the Zone of territory thus described, the Republic of Panama ceded to the United States in perpetuity the use, occupation, and control of any other lands and waters outside of the Zone which shall be deemed necessary for the construction, maintenance, operation, sanitation, and protection of the Canal, or of any auxiliary facilities or structures indispensable to the prosecution of the enterprise. The grant also contains a group of four small islands in the bay of Panama, which, may be fortified and served to protect the Pacific terminal. The Hay-Herran treaty did not give the United States sovereignty over the Canal Zone, and complications, no doubt, would have arisen had proceeded a conflict of authority. The danger of such a conflict is averted in the present treaty, the third article of which expressly gives to the United States all the rights and powers within the Zone and auxiliary lands, which it could possess and exercise, if it were sovereign of the said territory, to the entire exclusion of the exercise of the Republic of Panama. Vol. 32, Stat. at Large, 2681.

Panama of any sovereign rights by powers.

It is further to be noted that, by the fifth article, the Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance, and operation of any system of communication by means of canal or railroad across the territory between the Caribbean Sea and Pacific Ocean. The United States is also authorized to maintain public order in the towns of Colon and Panama, in case the New Republic is unable to do so. The ninth article is of great importance to all nations, it stipulates that the Republic of Panama declares free for all time the ports at either entrance of the canal, including Panama and Colon, in such manner that there shall not be collected by the government of Panama any customs house tolls, or tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind on any vessel passing through the canal, or employed by the United States in connection with the construction and operation of the main works or of their auxiliaries, or upon the cargo, officers, crew, or passengers of any vessels.

The obvious intent of the provision is that the vessels of all nations and their cargoes, crews and passengers shall be permitted to use and pass through the canal and the ports leading to it, subject to no levies or impositions, except such tolls or charges as may be levied by the United States for the use of the canal or other works. This agreement is in strict pursuance of the provision embodied in the Hay-Panama-Costa Treaty 1901¹.

It should, at the same time, be noted that, under the ports of Panama and Colon are to be left and open to the commerce of the world, so far as the use of the canal or the importation of

merchandise destined to be consumed in these towns is received, the Republic of Panama is authorized to establish at Panama and Colon such custom houses and yards as may be necessary to collect duties on merchandise to be consumed in the outlying territory. By the fourteenth article, adequate provision is to be made by agreement between the United States and the Republic of Panama for the reciprocal extradition of persons charged with crime or misdemeanor within the Canal Zone.

In the first article of the treaty, the United States Government guarantees the independence of the Republic of Panama, thereby assuming a protectorate over the newly formed Republic. Article twenty one provides that if, at any time, it should become necessary to employ armed forces for the safety or protection of the canal, or of the ships that make use of the canal, or of the railroad or other works, the United States shall have the right, in its discretion, to use its police, or its land and naval forces, or to establish fortifications for these purposes.

In Article twenty three, the Republic of Panama agrees that no change in its government, or in its laws and treaties shall, without the consent of the United States, affect any right of the latter government under the present convention. Thus the international situation between the two contracting parties as regards all other countries, whether European or Latin-American, is determined. The independence of the Republic, and its immunity from attack, is guaranteed by its most powerful neighbor.

As soon as the United States government took possession of the Canal Zone differences arose with Panama as to the sovereign authority in the Zone, whether it passed to the United States by

The stipulations of the Convention of November 18, 1903, or remained with the Republic of Panama. In a note of July 27, 1904, Mr. Arias, agent of the Republic of Panama, entered a protest against the authority assumed by the United States on the Zone. He said his country claimed the sovereign right within the Canal Zone not alone because it considers the Government as having been vested with that right, according to the treaty, but for the more potent reason that its future and its existence depends upon it. The sovereign right of levying taxes within the Zone does not appear to have been surrendered to the United States by any of the stipulations of the treaty.¹

Mr. Obalim, Secretary of State for the Republic, in a dispatch August 11, 1904, contended that the agreement concerning the Canal did not imply cession of territory and absolute transfer of sovereignty, and authority is conferred on the United States of establishing in the Zone a restricted judicial power. The treaty stipulates that the United States shall have power to possess the land and exercise in it rights, and authority over the Zone ceded to it by the Republic of Panama as if it were sovereign in the territory, but this expression implicitly conveys the idea that it is not sovereign.²

In a note of October 24, 1904, Secretary Day, in answer to the above protests states that: "Under the United States, by direct treaty stipulation, has been given power of control in the Zone, and if it were sovereign in the territory to the entire exclusion of the exercise by the Republic of Panama to any such rights, power or authority, it never possessed the right and authority of

1. Doc. Vol. 55, 58 Cong. 2 sess. p. 2341.

2. Doc. Vol. 55, 58 Cong. 2 sess. p. 2341.

regulate commerce, establish customs houses, and provide postal facilities, and if any sovereign powers are to be exercised in and over the Canal Zone they must be exercised by the United States. This interpretation of the clause relating to the sovereign authority in the Zone has been agreed upon and the United States now enjoys full authority and sovereign rights within the Zone.

In summarizing the relations between the United States and the Republic of Panama, with reference to the Canal Zone, it is evident that the rights and concessions granted by one of the contracting parties to the other, determine the status of the Zone as far as their governmental functions are concerned. A monopoly is granted, in perpetuity, to the United States for the construction, maintenance, and operation of railways or canals across the territory of the Republic. No taxes of any kind may be levied in the Zone by the Panama government, while the United States may act in its discretion in the matter.

The free immigration and access to any part of the Zone of any workmen that the United States may wish to bring to the Zone, excepting the undesirable classes, as the Chinese, Egyptians, Turks and criminals, is permitted. The entrances to the canal are to be open at all times, the United States may import free of duty any implements or machinery for the construction of the canal. The United States has the power to prescribe the sanitary ordinances for the cities of Panama and Colon, and may carry them into effect. The perpetual use of any streams or other bodies of water is granted, while the United States agree to allow Panama to use any telegraph or telephone lines, under its control, to transmit public dispatches at rates not higher than those charged for such service of the United States government.

We may conclude that the United States has complete control, both civil and military, over the entire Canal Zone and adjacent waters, excepting in the two cities at the entrances of the canal. It also has the privilege of leasing or purchasing any adjacent territory or waters necessary for the construction and the operation of the canal. With all these grants and concessions on the part of the Panamanian government the United States is left free to act under all circumstances, at its own discretion. Such action, however, must not overstep any of the treaty stipulations to which the government is a party.

In return for these grants, the United States guarantees the independence of Panama, and gives her the right to transport over the canal her troops, vessels and munitions of war, without paying charges of any kind.

The status of the canal, as far as other nations are concerned, is determined by article two of the treaty of 1901, which is also incorporated in the treaty with Panama 1903, and the Hay-Verrill Treaty. The "general principle" of neutrality is maintained and the rules and regulations adopted for the use of the Suez Canal are introduced. These rules, as stated above, declare that, the canal shall always be free and open to all nations and shall never be blockaded, and shall be immune from attack and injury. The control of the harbors is left to the United States, who will determine the rules and regulations for shipping over the canal.

Pledged, in the conventions of 1901 and 1903, to maintain the neutrality of the canal to all nations, our government has taken upon itself the burden of maintaining and protecting a great international enterprise, which on its completion will bring the western

and western coasts, does join the land miles, drawn together, for interoceanic commerce, and will be the means of stimulating trade with the Central and South American Republics and opening up new industries.

Although the United States is sovereign in its control over the Panama Canal, and has assured its neutralization by treaty stipulations, yet international law of itself places no restrictions upon the control of such a canal by any one nation. The great commercial powers have done so with interoceanic canals subjects for treaty stipulations, as is manifested in the international agreement entered into at Constantinople, October 1866, still the European Nations could not of right demand the neutralization of a Central American Canal, but they expect it to be administered in the interest of all nations concerned.

The Canal is declared to be neutral ground, and upon its completion will be open to all nations on terms of impartial equality. The United States having in charge its construction, maintenance, and operation will establish rules and regulations to be observed in the use of the Canal. Such rules and regulations, however, must conform to the stipulated principles discussed above. No country can fairly seek to claim from the United States any thing more than alluded to in the treaty agreements, for in all these agreements equal rights are offered to all and our government has reserved to itself merely the control, police and sanitary supervision.

"GOVERNMENT OF THE PANAMA CANAL ZONE"

The instruments of government both in Washington and in the Panama Canal Zone are, 1st. The President of the United States in whom Congress has intrusted all power and responsibility for the establishment and maintenance of a suitable government in the Canal Zone. 2nd. An Isthmian Canal Commission who by the President's orders enact such laws and establish such rules and regulations as in the Commission's judgment the conditions on the Zone demand. Legislative powers were by statute delegated to the Commission until the expiration of the Fifty-eighth Congress, provided that all laws were made and executed in accordance with the principle of the bill of rights.¹

Inasmuch as it was impracticable for the President, with his other duties, to give to the work of supervising the Commission's construction of the canal and government of the Zone the personal attention that was necessary, he in an order of May 9th. 1904, placed the Commission under the supervision and direction of the secretary of war. All instructions are received through him and all reports are made to and approved by him.²

The United States has acquired territory in several different ways: by treaties of purchase, by conquest, and by occupation. In practically all acquisitions of territory, territorial governments have been established. These territorial governments may be classified as, organized incorporated, unorganized incorporated, and

1. 33 Stat. L. Pt. 1. P. 429.

2. Letter of the President placing the Isthmian Canal Commission under the supervision of the secretary of war and defining its functions. S. Rec. Vol. 32, 58 Cong. 2 Sess. 1266.

organized unincorporated. The Panama Canal Zone is an example of the last class. It is ruled by Congress but there is a separate government for the Zone. The political status in the Zone will be better understood from a brief history of the Republic of Panama and its relations with the United States.

The Republic of Panama came into existence November 3, 1903, and was formally recognized, by the United States on the sixth of November of the same year, by the United States officials on the Isthmus, and on the thirteenth of the same month a public minister from the Republic was received by President Roosevelt at Washington.¹ Prior to November the third 1903, Panama was a province of the Republic of Colombia, and had been a victim of incessant spoiliations at the hands of the Colombian government for many years. By the Colombian Constitution of 1886, Panama was deprived of most of her civil rights and made subject to the direct control of the Bogota government. The Panamians chafed under this treatment and gladly welcomed an occasion to throw off such a burden. This occasion came with the rejection of the Hay-Herran treaty by the Colombian Congress The first of November 1903.²

Shortly after Panama had declared herself independent of Colombia she entered into treaty negotiations with the United States. These negotiations terminated in the Hay-Varilla treaty by which the United States was granted a canal concession across the Isthmus of Panama. In return for this concession the United States agreed to pay to the Republic of Panama ten million dollars in gold and to make an annual payment during the life of the conven-

1. Foreign Relations and President's messages, 1903. P. 245.

2. Forney, Vol. 1, 1903. P. 173.

tion of two hundred and fifty thousand dollars, beginning nine years after signing the treaty.¹

Article two of this convention established a Canal Zone within the Republic of Panama. This Zone was designated to be ten miles wide, extending from the Caribbean Sea to the Pacific Ocean, including the two important cities of Panama and Colon, for sanitary and other purposes. Article eight granted to the United States the rights which Panama had in the New French Panama Canal Company and the Panama Railroad Company, as a result of the transfer of sovereignty from the Republic of Colombia, to The Republic of Panama. It also authorized the New French Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all shares and parts of shares of the Company. On May 4, 1904, the New French Panama Canal Company transferred all its properties and rights, on the Isthmus, to the United States for the sum of forty million dollars.²

On April 22, 1904, Congress passed an act providing for the establishment of a government in the newly created Canal Zone.³ By this act the President was authorized, upon acquiring the property of the New French Canal Company and the payment of the stipulated sum, as provided for in the treaty, to the Republic of Panama: "to take possession of and occupy on behalf of the United States the Zone of land and land under water of the width of ten miles across the Isthmus of Panama from the city of Colon on the Caribbean Sea to Panama on the Pacific Ocean". This also included all islands in

1. S. Doc. Vol. 32. 59, Cong. 1st Sess. P. 114. Article XIV.

2. S. Doc. Vol. 32. 59, Cong. 1st Sess. P. 114.

3. S. Doc. No. 204. 59 Cong. 2d Sess. P. 114.

the Zone and those outside the Zone which were necessary for the construction, maintenance, operation, sanitation, and protection of the enterprise.

Section two of the same act made provision for a temporary government, which should be under the supervision of such person or persons as the President might direct, until the expiration of the Fifty-eighth Congress. Unless other provisions were made by Congress, all rules and regulations; all the military, civil and judicial powers; and all the rights, powers, and authority granted by the terms of the Hay-Varilla convention were to be exercised under the direction of the President. With this authority vested in him by act of Congress, the President set about to establish a government over the Zone and to "maintain and protect the inhabitants in the free enjoyment of their liberty, property, and religion."

In compliance with the act of Congress June 28, 1902, known as the Spooner act², the President appointed an Isthmian Canal Commission of seven members, who were to assist him in constructing a canal across the Isthmus of Panama. On May 9, 1904, he issued instructions to the Commission, through the secretary of war, under whose department it was to be built, giving it power³:

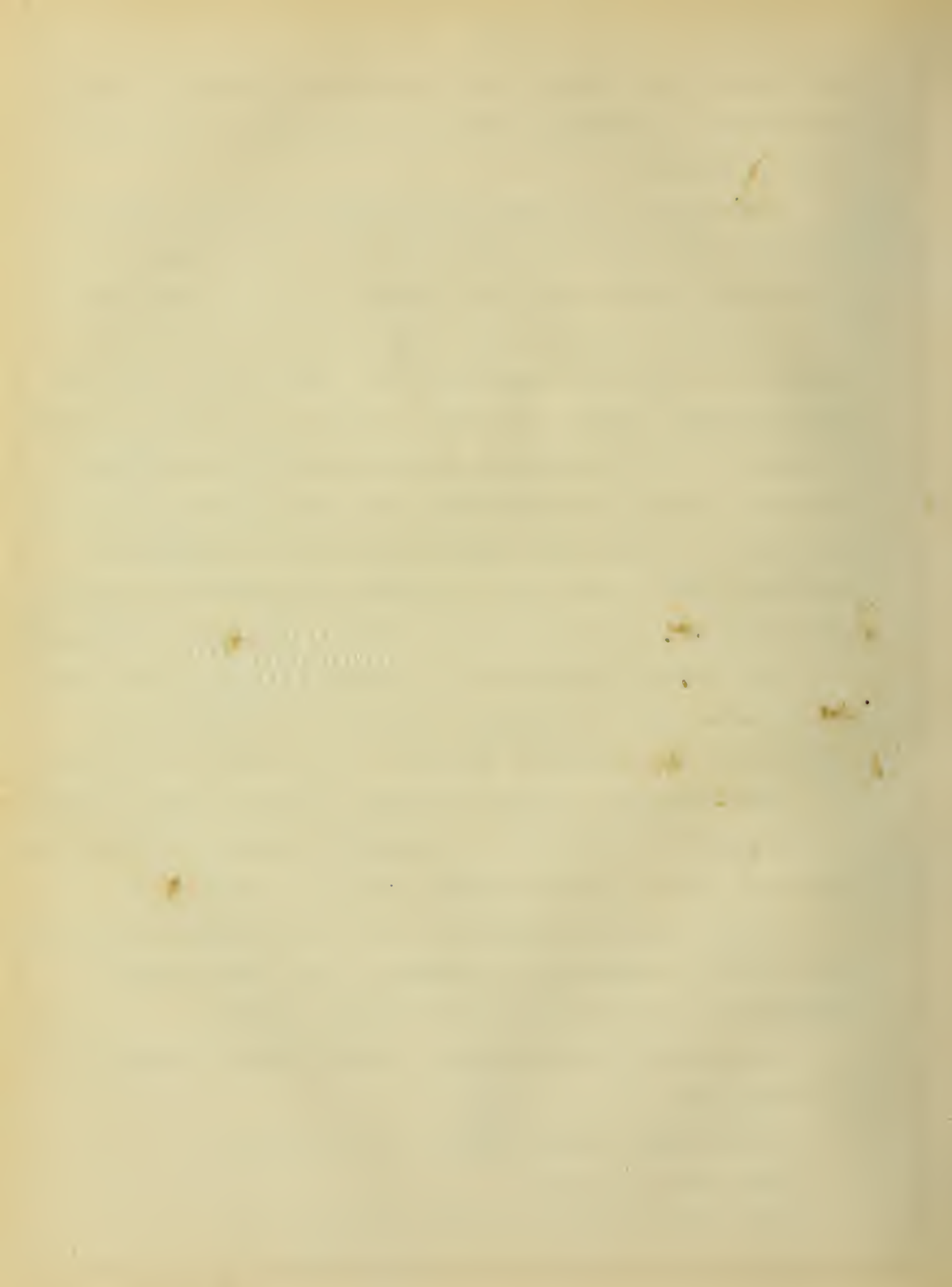
To make rules and regulations for the government of the Zone and to properly administer the military, civil, and judicial affairs until the close of the Fifty-eighth Congress.

To establish a civil service in which the merit system is to be employed.

1.S.Doc.204. 59,Cong. 2d.sess. P. 114. Sec.2.

2.32 Stat.,L. Pt.1.481.

3.S.Doc.Vol.52. 59, Cong.2sess. P. 75.



To have the needful surveys, borings, designs, plans, and specifications for the engineering, hydraulic and sanitary works made.

To make and execute all necessary contracts for all kinds of engineering and construction work.

To purchase any lands or property needed in the excavation and completion of the canal.

To formulate rules and regulations respecting an economical and correct disbursement and an accounting for all funds that may be appropriated by Congress for the construction of the canal; also to establish a proper and comprehensive system of book-keeping.

To make requisitions on the secretary of war for all funds needed in the prosecution of the work.

There was to be no change in the local administration on the Zone. The municipal laws of the Canal Zone were to be administered by the ordinary tribunals substantially as they were before the change of government. The laws of the land, which were familiar to the inhabitants, and in force in the Zone and in other places over which the United States had jurisdiction, were ^{to be} continued in force till they were annulled by the Canal Commission. The President, in applying the Constitutional bill of rights to the Zone, said, "There are certain great principles of government which have been made the basis of an existence as a nation which we deem essential to the rule of law and the maintenance of order, which shall have force in the Canal Zone! These principles briefly stated are as follows:-¹

No person shall be deprived of life, liberty, or property

1. S.Doc.Vol.32. 59, Cong. 5d sess.P.2421.

without due process of law; private property shall not be taken for public use without just compensation; a speedy trial shall be granted in all criminal prosecutions, but trial by jury was not established till by executive order (January 9, 1908.), that the accused shall have compulsory process for obtaining witnesses in his favor and counsel for defence; that excessive bail shall not be required, nor excessive fines imposed; that cruel or unusual punishment shall not be inflicted; that no person shall be twice put in jeopardy for the same offence; that no one shall be compelled to testify against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder or ex post facto law shall be passed; that no law shall be passed abridging the freedom of speech or press, or the right of the people to peaceably assemble and petition the government for a redress or grievance; that no law shall be passed respecting the establishment of religion or prohibiting the free exercise thereof.

Much discussion was precipitated by the act of Congress which placed the government of the Canal Zone under the immediate supervision of the President. That this was no departure from the traditional policy of the United States may be shown in most every instance where our government has acquired new territory. One instance will be sufficient to demonstrate the facts. We cite the plan of government adopted for the Louisiana Territory in 1803, when it was acquired from France¹. On October 31, 1803, Congress enacted a law instructing the President to employ the army and

navy in effecting an occupation and to maintain the authority of the United States in the territory.

The language used in the second section of the act of 1803, is almost identical with that used in the act of Congress 1904, which made provision for a temporary government in the Canal Zone. The act of 1803 reads as follows:— Until the expiration of the present session of Congress or unless provision be sooner made for the temporary government— all the military, civil, and judicial powers exercised by the officers of the existing government in the territory, shall be vested in such person or persons, and shall be exercised in such manner as the President may direct, for maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property and religion. Again in 1804, an act was passed extending several laws of the United States to the territory.¹

The President was further criticised for applying a portion of the Constitution to the Canal Zone and withholding the other, but a precedent had been established in an executive order of April 7, 1900, when President McKinley in applying the Constitutional bill of rights to the Philippine islands said: "upon every branch and division of the government of the Philippines, therefore, must be imposed those inviolable rights,"² though he omitted from the list the right of trial by jury, indictment by grand jury, and the right to bear arms. Precisely the same omissions were made in President Roosevelt's order of May 9, 1904, when he extended the bill of rights to the Panama Canal Zone.

The Canal Commission authorized by act of Congress June 28, 1906, p. 372.

2. Compiled Reports P. S. (Philippine Commission)

1902, and appointed by the President May 9, 1904, conducts its business acting in a body. By executive order of April 1, 1905, the commission was organized into three executive departments. The organization is shown on page four of the ninety-first meeting of the Isthmian Canal Commission, as follows:-
For convenience of executing the work to be done, there shall be constituted three executive departments.

(a) The head of the first department shall be the chairman of the Commission, who shall have direct and immediate charge of all general concerns of the Commission, subject to the supervision and direction of the secretary of war.

(b) The head of the second department shall be the governor of the Zone, who shall administer and enforce the laws of the Zone. He shall reside on the Isthmus and devote his entire time to the service.

(c) The head of the third department shall be the chief engineer, who shall have charge of all the actual work of construction. This same order specified the duties of the different members of the Commission, and made the chairman and governor of the Zone members of the Commission, and constituted them an executive committee with power to act.

The Executive Committee, as provided for in Executive order of April 1, 1905, was abolished by order of November 17, 1906, and in order to promote greater harmony between the heads of the departments the Commission was organized under the following heads: Chairman, Chief Engineer, General Counsel, Chief Sanitary Officer, General Purchasing Officer, General Auditor, Disbursing Officer, and manager of Labor and Quarters.

The Chairman was given charge of all departments incident to the construction of the canal or any of its accessories. He appoints the heads of the various departments who report to and receive instructions from him.

The Chief Engineer has charge of all engineering work relating to the canal and its accessories, and in the absence of the Chairman from the Isthmus, he acts as Chairman.

The General Counsel has charge of all legal matters pertaining to the Commission, and the administration of civil government in the Zone. The other departments are under special officers whose duties are prescribed by law. All officers and employees are appointed, and their salaries are fixed, by the head of the department in which they are engaged.

The Commission has had at the head of its departments some very notable men. The first Chairman of the Commission was Admiral John C. Walker, U.S. Navy, who on the account of his previous experience in such work was of great service to the Commission. Admiral Walker was succeeded as chairman of the Commission, April 1, 1905, by Theodore P. Shonts, whose experience and energy in effecting and maintaining an organization as was required on the Zone, proved to be of the greatest service to the Commission.

Major General George W. Davis, U.S. Army, was the first governor of the Zone. He had previously served as governor of Porto Rico, and the Philippine islands. It was largely through his wise administration that the civil government of the Zone was brought to its present status. General Davis was succeeded as governor of the Zone by Charles E. Magoon April 1, 1905, who resigned September 1906, to accept the Provisional governorship of Cuba.

By Executive order of March 23, 1907, the Zone affairs were placed more directly under the War department at Washington, with army officers in charge. Two other important changes resulting were the combination of the positions of Chairman and Chief Engineer and the requirement that the Commissioners take station on the Isthmus where they could be in direct touch with their work.¹ Lieutenant Colonel George W. Goethals, U.S. Army, is at present both Chairman and Chief Engineer of the Commission. The office of governor was abolished by Executive order of November 17, 1907, and a department of civil administration, charged with the duty of administering the civil government within the Canal Zone, was created and placed under the supervision of the Chairman of the Commission. Ex Senator J.C.S. Blackburn was appointed head of the civil administration of the Zone and still holds that position.

The Isthmian Canal Commission was granted the right to legislate on all rightful subjects not inconsistent with the laws and treaties of the United States so far as they apply to the Canal Zone.² These powers also included the enactment of sanitary ordinances applicable to the cities of Panama and Colon. Their legislative power also included the power to raise and appropriate revenues in the Zone; and all taxes, fines, customs duties, and other revenues levied and collected in the Zone were to be properly disbursed by the Commission. Four members of the Commission constitute a legislative quorum, and all rules and regulations passed and enacted by the Commission are enacted by the Isthmian Canal Commission, "in the name of and by the authority of the President of the United States". The Commission holds its regular meetings quarterly,

¹ Annual Report of the Isthmian Canal Commission. 1907 P. 1.
² 2d Doc. Vol. 22, 9, Cong. 3d, 2d sess. P. 242.

and all laws, rules and regulations enacted by it must be submitted to the secretary of war for his approval.¹

The Commission was given power to exclude from the Canal Zone persons who were not domiciled within the Zone on the 26th day of February 1904, viz: idiots, the insane, epileptics, paupers, criminals, beggars, persons inflicted with contagious diseases, those who have been convicted of felony, anarchists, and those who incite insurrection, endanger the public health, or in any way impede the work on the canal; and may deport from the Zone such aliens as are deemed injurious to the public welfare.²

With the above instructions to guide them the Commissioners proceeded to enact laws, rules and regulations for the government within the Zone. A civil government, within which the three branches legislative, executive, and judicial were to be separate and distinct, was provided for in the legislation. The principal acts provided for: The organization of a judiciary and fixed its powers in the Zone; the appointment of notaries public, defining their duties and fixed their term of office; the suppression of lotteries and similar enterprises; the suppression of gambling, and the punishment for the violation of the act; the continuing in office of the Alcaldes of the several municipalities; the exercise of the right of expropriation within the Zone, and providing a method of procedure for exercising that right.

Further legislation was made providing for: The organization of municipal governments in the Canal Zone; the organization of the executive branch of government; the sanitary regulation of the Canal Zone; the maritime quarantine regulations for the ports

1. Hearings relating to the Panama Canal. Vol. 3. P. 2423.

2. S. Doc. Vol. 22, 59, Cong. 2d, sess. P. 444.

and harbors; the observing of certain specified holidays; the establishment of a penitentiary, the temporary performance of the duties of the marshal of the supreme court and the circuit courts, also the clerk of the two courts; the establishment of penal code and a criminal code of procedure; a method of determining the salaries of the army and navy officers and the officers employed in the public health and hospital service; an inexpensive method of administration upon the estates of employees of the government who are citizens of the United States and who die in the Canal Zone.¹

The criminal and penal codes of procedure enacted for the Zone were modeled after the codes in force in Porto Rico, although it was necessary to make many changes in order to meet the conditions existing in the Canal Zone. Trial by jury was not at first provided for, but provision was made that in cases wherein the penalty of death or imprisonment for life could be inflicted the circuit judge of the court wherein the information is filed or the action is triable shall summon two municipal judges of the judicial circuit to sit with him in the trial of the case; If the municipal judges summoned shall for any cause be unable to take part in the trial or shall be excused by the circuit judge, the circuit judge shall summon two mayors of municipalities in the circuit to sit with him in the trial of the case; if for any sufficient reason the above named officers cannot sit in the trial, the judge may summon any disinterested and otherwise well qualified residents of the circuit to sit with him in the trial of the cause.² The three hear the testimony and determine the question of fact; the circuit

1. Laws of the Canal Zone. PP. 1-239.

2. Laws of the Canal Zone. pp. 1-15. (Report for 1927, p. 160)

judge alone determine the question of law.

The above code of laws was not intended to be complete within itself but it formed a working basis. Additions have been made from time to time as conditions have demanded. Some of the more important provisions have to do with land taxes, internal revenues, registration of land titles and amendments to the original laws.

The judicial power of the Canal Zone, as provided for in the code of laws enacted by the Canal Commission, is vested in a supreme court, three circuit courts and five district courts, and other such tribunals as may be established by law. The supreme court and the circuit courts are courts of record. The supreme court consists of a chief justice and two associates, two of whom are necessary to transact business and to pronounce judgment. The supreme judges are appointed by the Isthmian Commission. The judges of the supreme court sit in banc with the chief justice presiding. The court is always open for business except holidays and non judicial days. The jurisdiction of the court is both original and appellate. Its original jurisdiction extends to issuing writs of mandamus, certiorari, prohibition, habeas corpus, quo warranto etc. The court has appellate jurisdiction over all actions properly brought to it from the other courts.

A clerk of the supreme court is appointed by the Commission, whose duties are to act as reporter, recording officer, interpreter, and translator for the court and he with his assistants may perform any other duties prescribed by law.

Each of the circuits is presided over by a justice of the supreme court sitting as a trial judge. These courts hold their sessions at a place and time fixed by the justices of the supreme court of the Canal Zone. 115

court. Their jurisdiction is both original and appellate. The original jurisdiction extends to all civil actions where the title of property is in dispute; to all criminal cases where a fine exceeding twenty five dollars or imprisonment for more than thirty days may be imposed; to all suits where the value of property in controversy amounts to one hundred dollars or more. The circuit courts have appellate jurisdiction over all cases appealed from the inferior courts in their respective circuits. Each judge of the circuit appoints a clerk for the circuit court of his judicial district, subject to the approval of the Canal Commission, but his duties are prescribed by law.

Each of the district courts is presided over by a district judge. There is also a fifth judge known as senior district judge, who sits whenever required, and twice a month presides over and keeps minutes of a conference of all the judges.¹ The district judges are also appointed by the Canal Commission and their jurisdiction includes both civil and criminal cases of minor importance. District judges have original jurisdiction in all cases of misdemeanor wherein the fine that may be imposed may not exceed one hundred dollars or imprisonment in jail may not exceed thirty days or both. They have jurisdiction of the circuit court in cases of violation of Zone or District ordinances. The duties of the judges are numerous and very important. They try from five hundred to six hundred cases a month, and upon them, depends, in a large measure, measure the enforcement of the laws of the Zone. They combine the functions of the country justice of the peace in the United States with those of the city recorder. Since the tendency of the administration is to more and more centralize the government in the

1. Executive Order, March 15, 1907. Circular No. 33.

Zone the district courts have become the most vital force of justice in the local government of the Zone.

The Executive department of the Zone government was first organized by the Canal Commission in September 1904, as the "Government of Canal Zone." Although the department has undergone many changes its duties are still "the protection of the inhabitants of the Zone in their persons and property and in their private rights and relations". The executive branch of the department of government includes the executive office, the divisions of posts, customs and revenues, the police and prisons, schools, fire protection and public works, also the office of prosecuting attorney and some others that are more directly under the executive office, as the executive secretary, the treasurer and the auditor.

The Executive order of November 17, 1906, reorganized the Commission into seven departments providing that "a General Counsel shall have charge of all legal matters pertaining to the Commission whether in the United States or in the Isthmus of Panama; also the administration of civil government within the Canal Zone, and shall exercise through a local administrator, the authority heretofore vested in the governor of the Canal Zone".¹

On April 12, 1907, an Executive order vested the authority of the chief executive in the chairman of the Commission, who exercised that authority until May 9, when a member of the Canal Commission was placed in charge of the Zone Government, as head of the department of civil government.²

1. Laws of the Canal Zone. p. 52.

2. Annual Report of the Isthmian Canal Commission. 1907. p. 145.

3. ibid.

The powers of the head of the civil government are the same as those formally enjoyed by the governor of the Zone. These powers are set forth in Executive order of May 9, 1904¹. The President in nominating the governor of the Zone said: Major General George W. Davis, U.S. Army, a member of the Isthmian Canal Commission, is hereby appointed governor of the Canal Zone. --- He will in my name, as chief executive in the Canal Zone, for and on behalf of the United States, see that the laws are faithfully executed. --- He is hereby vested with the power to grant reprieves and pardons for offences against the rules, regulations, and laws in force by virtue of action of the Commission or by virtue of the clause hereof continuing in force the laws of Panama. Except as herein prescribed the duties of the governor shall be fixed by legislation of the Canal Commission.

By Executive order of June 24, 1904, provision was made for the creation and establishment of a postal service for the Canal Zone. The order provided that "it shall be the duty of the postal service to administer the affairs of the post offices and the general postal system of the Zone". The postal service of the Canal Zone is conducted and regulated by the laws and rules of the United States as far as applicable to the conditions of law and fact existing in the Canal Zone and the rules and regulations adopted by the Canal Commission. The post-masters of the Zone are appointed by the governor, who may establish new offices or discontinue those already established as the service may require. A director of posts is charged with the direct conduct and control of affairs, also the inspection of post offices and the accounts of post-masters

Postage stamps for the payment of postage in the Zone are the postage stamps of the United States surcharged with the words "Canal Zone Panama!"¹

There are two customs districts and two ports of entry in the Canal Zone. Ancon on the pacific side and Cristobal on the Atlantic side. Under Executive order of December 3, 1904, no duties, tolls or fees of any kind are charged for services rendered vessels entering and clearing at the ports of the Canal Zone. The customs service of the Zone renders no revenue. The duties of the customs officers are to enter and clear vessels, file manifests, and enforce the laws of the Republic of Panama against smuggling and the immigration of Chinese, Turks, and Syrians into the Zone.²

The sources of revenue as described in the act of the Commission creating the internal revenue service are "such taxes, imposts, dues, fees, fines, and penalties as authorized and required by the United States that are applicable to the Canal Zone". By Executive order of March 15, 1907, four district tax collectors and five assistants were appointed and assigned duties under the collector of revenues, who has charge of collecting all revenues. In each district the tax collector discharges the duties of the former municipal treasurer and Board of Assessors. He has charge of collecting the license taxes, the assessment and collection of all ad valorem taxes, the preparation of head lists for work upon public improvements and the issuance of citations and collection of commutation taxes, the keeping of the Civil Register, the collection of rents from municipal and public property, the execution of

1. Annual Report of the Isthmian Canal Commission. 1904. p. 83.

2. Isthmian Canal Commission's Report for 1908. p. 25.

leases and the execution of deeds. He also represents the district in all litigation affecting municipal property, he keeps books showing all assessments made, taxes and rents due, and collections made. He reports to the Collector of Revenues and deposits all fines, fees, and other funds with the Treasurer of the Canal Zone. For the purpose of equalizing assessments in the several districts the three circuit judges sit once a year as a board of equilibration.

By act of March 4, 1907, the Zone revenues were applied toward meeting the contingent expenses of the government. The act of May 27, 1908, extended the use of the Zone revenues to the maintenance of the administrative districts of the Zone which includes salaries and wages, also the maintenance of paupers, hospitals and prisoners. The revenues of the Zone are more than sufficient for the maintenance of the government. The report for the current fiscal year shows that the receipts will aggregate \$325,000, the total amount of which is being used for maintaining the different departments and making improvements.¹

The police department plays a prominent part in the Zone government. It is composed of one chief and two hundred and thirty one subordinates, who are colored, and in some part natives of the West Indies. The chief of police, in addition to his police duties, acts as marshal of the upper courts, warden of the penitentiary, and coronor of the Canal Zone. The subordinates act as deputies in the same offices, and perform duty as watchmen of government property. Prisons are connected with the various police departments. A penitentiary has been provided for and established at Colon.²

1. Annual Report for 1906. Circular No. 32.

2. Commission's Report for 1906. p. 253.

Section fifty two of the Canal laws placed the duty of formulating plans for the establishment of a practical, efficient and comprehensive system of schools adapted to the necessities of the inhabitants of the Zone, upon the governor of the Zone. The present government maintains eleven schools for the white children with an enrollment of five hundred and thirty two pupils, and fifteen schools for the colored children with an enrollment of thirteen hundred and sixty four pupils.¹

The departments of fire protection and public works both fill an important place in the Zone. The fire department is composed of paid and volunteer companies, electric fire alarm systems, and special systems for the protection of property belonging to the United States. Because of the strict regulations fire insurance companies have not been fit to enter the Zone, consequently the only protection from fire is by a well equipped system of prevention.

The prosecuting attorney's duties are defined and prescribed by section 59, act No. 1 of the Laws of the Canal Zone. His work may be divided into three branches: First, to act as legal adviser to the governor of the Zone; second, to prosecute offences against the laws of the Zone; third, to investigate and settle claims against the Commission.

The Canal Zone was originally divided into five municipalities for governmental purposes.² Each municipality had its own municipal officers, consisting of mayor, secretary, treasurer, municipal council, and a judge appointed by the governor of the Zone. Their duties were provided for by the legislative actions

1. Commission's annual report for 1903. p. 169.

2. Laws of the Canal Zone. p. 29.

of the Canal Commission. In the Executive order of March 28, 1907, the Zone was redivided, changing the number of local divisions from five municipalities to four districts, known as Ancon, Imperador, Gorgona, and Cristobal. By the same order the municipal councils and all other municipal officers then existing were abolished. With the exception of the tax collectors, district judges and the officers that the Commission might appoint, the local affairs of the districts were placed in the hands of the Executive officers of the Zone.¹

The municipal government in operation in the Canal Zone May 4, 1904, when the United States came into possession, was composed of an Alcalde appointed by the Prefect of Panama, a municipal judge chosen by the municipal council; inspectors of police, one for each municipal subdivision; a treasurer and a secretary. There were usually two schools in each town, but they were poorly equipped for school purposes. Within the Canal Zone, outside the towns and cities, there was no public high-way over which wheeled vehicles could pass. There was no means of going from one town to another except by the one railroad which ran directly across the Isthmus. Communication between the towns was very poor, as there was but one telegraph line along the railway and no telephones.²

The power of the Isthmian Canal Commission to enact laws, is accorded with the act of Congress March 2, 1906, and the authority to legislate for the Canal Zone reverted to the President of the United States.³ Since that time several important Executive

1. Executive order in Circular No. 32.

2. First Annual Report of the Canal Commission. p. 94.

3. 33Stats. L., pt. 1, p. 629.

orders have been issued changing materially the local government in the Zone. One of the most important of these orders was of March 18, 1907, extending the United States patent, trade-mark and copy right laws to the Zone. Also regulating insurance companies, and providing for the registration of land titles and the celebration of marriages. The penal laws were amended and a new code of civil procedure was put in force. By the same order the Commission was authorized to enact ordinances relating to the police, sanitation and taxation.

Since March 4, 1903, when the power of the Canal Commission to legislate for the Zone passed, new and complicated affairs arose which the legislation of the Canal Commission was inadequate to meet. To meet this need the President on March 18, 1907, issued a general order, Circular No. 33, in which the penal and criminal codes of procedure are so amended as to meet the existing needs in the Zone.

Other important Executive orders have been added to the above list. In an order of January 8, 1908, the Chinese-exclusion law of the Republic of Panama was extended to the Canal Zone, and an order of February 6 provided for trial by jury in all criminal prosecutions in the Zone wherein the penalty of death or imprisonment for life might be inflicted. The employers liability act, and an act providing for the compensation of government employees injured in the performance of duty were extended to the Zone.¹

On June 24, 1904, an Executive order was issued extending the Dingley tariff to the Canal Zone.² The effect of which was to make

1. Commission's Report for 1906 and 1907.

2. S. Rec. Vol. 37. 59, Cong. 2. 3010.

the Zone for tariff purposes a part of the United States and to exclude it from the Republic of Panama by a tariff wall. Section five of the above act provided that "duties on importation into the Zone are to be levied in conformity with such duties as Congress has imposed upon foreign merchandise imported into other ports of the United States; also that "goods or merchandise entering the Canal Zone from ports of the United States or Insular possessions shall be admitted on the same terms as at ports of the states of the Union". Objection was made by the Republic of Panama to this discrimination and the order was rescinded and later a new tariff schedule was agreed upon which has proven to be very satisfactory.

When the United States government took charge of the Panama Canal Zone there were a number of citizens of Panama, former citizens of the Republic of Colombia,¹ residing within the Zone, who came directly under the powers of the Governor and the Commission, in certain particulars that are defined in the Hay-Varilla treaty, namely, the grant of sovereign rights within the Zone to the United States and the entire exclusion of the exercise by the Republic of Panama of these rights. Although the inhabitants of the Zone have come under the sovereignty of the United States, their citizenship has not been changed by any law of this government or any act of the Commission, neither have the citizens of the United States who have gone to the Zone forfeited their citizenship at home.

The citizens of the Canal Zone are not citizens of the United States, nor may they become such except through domicile and naturalization in that country. — How far they can acquire political rights by migrating to the United States remains to be seen.

1. First annual report of the Commission, p. 75.

The Court's decision in *United States v. Wong* provides that: All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States. But in the case of *Wong*, it was held by the Supreme Court that a native of Porto Rico was not a citizen of the United States. The Supreme Court, in the *Inular* cases, has held that in the absence of Congressional legislation to the contrary, natives of the Insular possessions, who were residing in them at the time of acquisition, could not be excluded from the United States as alien immigrants.³

By acts of April 12, 1900 and July 1, 1902, Congress declared the inhabitants of Porto Rico and the Philippine Islands "citizens of Porto Rico" and "citizens of the Philippine Islands" respectively. The evident intent of Congress was to exclude them from citizenship in the United States. The political status of the Panama Canal Zone is somewhat different from that of the other possessions, yet the status of citizenship, with reference to the United States, is generally held to be the same.

The Panama Canal Zone is a land of laws, a Republic, but quite different from our own. The right of suffrage has never been exercised and no elections have been held. Many citizens residing within the Zone have the right to vote outside the Zone but none have that right in it. (Section 2 of an agreement entered into by the Secretary of War and the Republic of Panama, recognizes the right of the Republic of Panama to permit citizens of Panama

1. 24 Supreme Court Report, 511.

2. See *Wong*, 110 Fed. 211, (27 Sup. Ct. 107 (May, 1911).)

3. See *Wong*, at 511 Sup. Ct. 107.

residing in the Canal Zone to vote at voting places outside the Zone.¹

The relations between the United States and the Republic of Panama have been very satisfactory during the period of occupation in the zone by the United States. All questions of dispute with the Panama government have grown out of the provisions of the Canal treaty and subsequent agreements concerning the sanitation of Colon and Panama, or have arisen from the proximity of the zone and Panama. All these differences have been settled satisfactorily and the officials of the Republic have manifested a desire to aid the Commission in its work.²

The treaty of November 18, 1903, makes provision for the settlement of any dispute over or damage done private property in the Zone, by the United States government or its agents by reason of the operation of government, the construction, maintenance, operation, sanitation, and protection of the canal. Any such dispute or damage is to be settled by the two governments through a mixed Commission, which shall consist of two members appointed by the President of the United States and two appointed by the President of the Republic of Panama, who judge all such cases and fix the damage. All damages must be paid solely by the United States.

All the power and authority exercised in the Canal Zone government is delegated. Congress of the United States is supreme and may enact laws for the government of the Zone in accordance with the Constitution and treaty stipulations.

1. Commission's Report. 1904. p. 10.

2. Annual report for 1903. p. 22.

"CONCLUSION"

By the acquisition of the Panama Canal Zone from the Republic of Panama November 18, 1903, in accordance with the stipulations of the treaty between the Republic of Panama and the United States, the latter government came into control "as if it were sovereign" of a strip of land in Panama extending to the distance of five miles on each side of the center line of the route of the canal to be constructed; the Zone begins in the Caribbean sea three marine miles from mean low water mark, excepting however, the cities of Colon and Panama. This area comprises about four hundred and forty eight square miles and contains a native population of about ten thousand people.¹

The natives are a mixed race of people of Spanish, Indian, and Negro origin. The Zone is sparsely settled excepting the towns and a few points along the Panama railway. The population is supported chiefly by the interoceanic traffic and some are employed on the constructive work of the canal. But little attention is paid to agriculture and market gardening. The majority of the inhabitants prefer employment on the canal at the relative high wages rather than cultivate their lands.

The proper sanitation of the Canal Zone was a great problem that confronted the Canal Commission on taking charge of the Zone. No sooner did the Commissioners take possession than preparations were made to provide for pure water, adequate living quarters, hospitals and hospital service, and medical service, which service has been made free to employees but a nominal fee is charged others.

1. First annual report of the Commission. p. 79.

2. Commission's report for 1903. p. 34.

In this field of operation the United States has been busily engaged, a good portion of the Canal Commission's first three years on the Zone were spent in preparing it for a suitable habitation for the employees.

Prior to July 1, 1908, the government had spent \$7,171,318.46 for sanitation, hospitals, medicine etc. During the same period \$9,566,907.94 were spent in erecting buildings and quarters for employees on the Zone. \$2,251,131.17 were expended in providing water supplies, sewers and paving. The above figures are the more significant when we realize that the same report shows that only \$63,368,530.20 had been employed in actual engineering and constructive work up to that time.¹

The American people in general know but little of this enormous enterprise being carried forward by the United States. The building of an interoceanic canal across the Isthmus of Panama involves the expenditure of labor and money beyond any enterprise of the nineteenth century. Forty three thousand six hundred and fifty seven men are employed in constructing the canal.² The project as originally adopted by Congress was estimated to cost \$153,705,200 exclusive of sanitation and governmental expenses. But as the work has progressed, estimates of the final cost are placed at \$300,000,000, by the engineers in charge.

1. Annual report for 1908. p. 255.

2. Ibid.

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